

John A. Karousos
Room 3-A266

DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP

2101 L Street NW • Washington, DC 20037-1526

Tel (202) 785-9700 • Fax (202) 887-0689

Writer's Direct Dial: (202) 955-6631

E-Mail Address: KerstingA@dsmo.com

RECEIVED

OCT 29 2004

Federal Communications Commission
Office of the Secretary

October 25, 2004

RECEIVED - FCC

DOCKET FILE COPY ORIGINAL

OCT 25 2004

Federal Communication Commission
Bureau / Office

By Hand

Marlene H. Dortch
Secretary
Federal Communications Commission
c/o 236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

Re: Amendment of Section 73.202(b),
Table of Allotments, FM Broadcast Stations
(Oroville, California)
MB Docket No. 04-350; RM-10815

Dear Ms. Dortch:

Transmitted herewith on behalf of Deer Creek Broadcasting, LLC; are an original and four copies of its "Comments and Counterproposal," filed in the above-referenced proceeding.


Should any questions arise concerning this matter, please communicate directly with the undersigned.

Very truly yours,

DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP

Attorneys for
Deer Creek Broadcasting, LLC

By:


Andrew S. Kersting

Enclosure

cc: Certificate of Service (w/ encl.) (by hand & first-class mail)

No. of Copies rec'd
List ABCDE

02

1177 Avenue of the Americas • New York, NY 10036-2714

Tel (212) 835-1400 • Fax (212) 997-9880

www.DicksteinShapiro.com

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

OCT 29 2004

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 04-350
Table of Allotments,) RM-10815
FM Broadcast Stations)
(Oroville, California)

To: Assistant Chief, Audio Division
Media Bureau

COMMENTS AND COUNTERPROPOSAL

Deer Creek Broadcasting, LLC ("Deer Creek"), acting pursuant to Section 1.415 of the Commission's rules, 47 C.F.R. §1.415, hereby submits its comments and counterproposal in response to the Commission's *Notice of Proposed Rule Making*, DA 04-2859 (Aud. Div., September 3, 2004) ("*NPRM*"), in the above-captioned proceeding.

Linda A. Davidson ("Petitioner") has proposed to allot Channel 272A at Oroville, California, as that community's second local aural transmission service. As stated in the *NPRM*, the proposed allotment requires a site restriction of 9.4 km (5.8 miles) north of the community to avoid being short-spaced to the licensed transmitter sites of stations KCEZ(FM), Channel 271B1, Los Molin, California, and KSFM(FM), Channel 273B, Woodland, California. Deer Creek proposes that the following change be made to Section 73.202(b) of the Commission's rules in lieu of the change proposed in the *NPRM*:

	<u>Channel No.</u>	
<u>City</u>	<u>Present</u>	<u>Proposed</u>
Quincy, California	240A, 262A	240A, 262A, 272A

The foregoing counterproposal would better serve the public interest than Petitioner's proposal. As demonstrated in the Engineering Statement of Hatfield & Dawson ("Engineering Statement") annexed hereto, the predicted 70 dBu contour for the proposed Channel 272A allotment at Oroville does not cover 100% of the community. The 70 dBu contour has a radius which extends 16.2 km from the reference coordinates, but the southern tip of Oroville extends 17.3 km from the reference coordinates. The reference coordinates cannot be moved to the south to correct this deficiency in the city-grade coverage of Oroville without creating a short-spacing to first-adjacent channel station KSFM, Woodland. *See* Engineering Statement at 2-3.

The failure to cover 100% of Oroville violates Section 73.315(a) of the Commission's rules. 47 C.F.R. §73.315(a). That section requires an allotment proponent to locate its transmitter so that it will place a minimum field strength signal of 70 dBu over the entire principal community to be served. *Milford, Utah*, 19 FCC Rcd 10335, 10337 (Aud. Div. 2004); *Crawfordville, Georgia*, 17 FCC Rcd 25070, n.3 (Aud. Div. 2002). The Commission has waived the minimum coverage requirement at the allotment stage only in very unusual circumstances not presented by Petitioner's proposal. *See Caldwell, College Station and Gause, Texas*, 13 FCC Rcd 13772, 13775-76 (1998) (subsequent history omitted); *Terrell and Daingerfield, Texas*, 5 FCC Rcd 556 (1990); *Bayshore, New York*, 2 FCC Rcd 1293, 1295 (1987). Therefore, the proposed allotment of Channel 272A at Oroville, California, should be denied.

In lieu of the proposal set forth in the *NPRM*, Deer Creek proposes that the Commission allot Channel 272A at Quincy, California, as that community's sixth local aural transmission service. The Commission has previously allotted Channels 240A and 262A to Quincy, which is the county seat of Plumas County, California. Quincy is currently served by stations KPCO(AM), KHGQ(FM), and KNLF(FM), which are currently licensed to the community. In addition, on July 15, 2003, the Commission issued two construction permits for

stations KQNC and KJCQ authorizing the commencement of new noncommercial FM service to Quincy. *See* File Nos. BNPED-20000119ABU and BNPED-20000517AFH, respectively.

As demonstrated in the Engineering Statement annexed hereto, the proposed allotment of Channel 272A at Quincy complies with the Commission's distance separation requirements. To avoid a short-spacing to station KNTK(FM), Channel 272C1, Weed, California, Deer Creek has proposed a site restriction of 10 kilometers southeast of Quincy. The reference coordinates for Channel 272A at Quincy are located at North Latitude: 39° 51' 35" West Longitude: 120° 53' 24". As shown in the contour map contained in the Engineering Statement, the proposed operation on Channel 272A at Quincy from the reference coordinates will enable the new Class A facility to provide greater than 70 dBu coverage to the entire Quincy community. *See* Engineering Statement at 4.


If the instant counterproposal requesting the allotment of Channel 272A at Quincy is adopted, Deer Creek will file an application for a construction permit for the new Class A facility, and, if its application is granted, will promptly construct and operate the new station at Quincy.

WHEREFORE, in light of the foregoing, Deer Creek respectfully requests that (1) the proposal set forth in the *NPRM* to allot Channel 272A at Oroville, California be DENIED, and (2) the counterproposal set forth herein to allot Channel 272A to Quincy, California as that community's sixth local transmission service be ADOPTED.

Respectfully submitted,

Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, N.W.
Washington, DC 20037-1526
Tele: (202) 785-9700
Fax: (202) 887-0689
E-mail: paperl@dsmo.com

Attorneys for
DEER CREEK BROADCASTING, LLC

By: 
Lewis J. Paper
Andrew S. Kersting

Engineering Statement

JAMES B. HATFIELD, PE
BENJAMIN F. DAWSON III, PE
THOMAS M. ECKELS, PE
STEPHEN S. LOCKWOOD, PE
DAVID J. PINION, PE

PAUL W. LEONARD, PE
ERIK C. SWANSON, EIT
THOMAS S. GORTON, PE

HATFIELD & DAWSON
CONSULTING ELECTRICAL ENGINEERS
9500 GREENWOOD AVE. N.
SEATTLE, WASHINGTON 98103

TELEPHONE
(206) 783-9151
FACSIMILE
(206) 789-9834
E-MAIL
hatdaw@hatdaw.com

MAURY L. HATFIELD, PE
CONSULTANT
Box 1326
ALICE SPRINGS, NT 5950
AUSTRALIA

**Engineering Statement
Comments and Counterproposal in MB Docket No. 04-350
October 2004**

This Engineering Statement has been prepared on behalf of Deer Creek Broadcasting, LLC ("Deer Creek"), licensee of stations KEWE 1340 kHz Oroville, KPAY 1290 kHz Chico, KHHZ Channel 249B1 Oroville, KHSL-FM Channel 278B1 Paradise, and KMXI Channel 236B Chico, in support of Comments to be filed in MB Docket No. 04-350. In that proceeding, Linda A. Davidson ("Davidson") has proposed the allotment of Channel 272A at Oroville, California. The Notice of Proposed Rulemaking ("NPRM") in this proceeding was released on September 3, 2004.

As will be demonstrated below, the allotment of Channel 272A at Oroville does not comply with the Commission's community of license coverage requirements. Deer Creek counterproposes that Channel 272A be allotted at Quincy, California.

Hatfield & Dawson Consulting Engineers

Channel 272A at Oroville

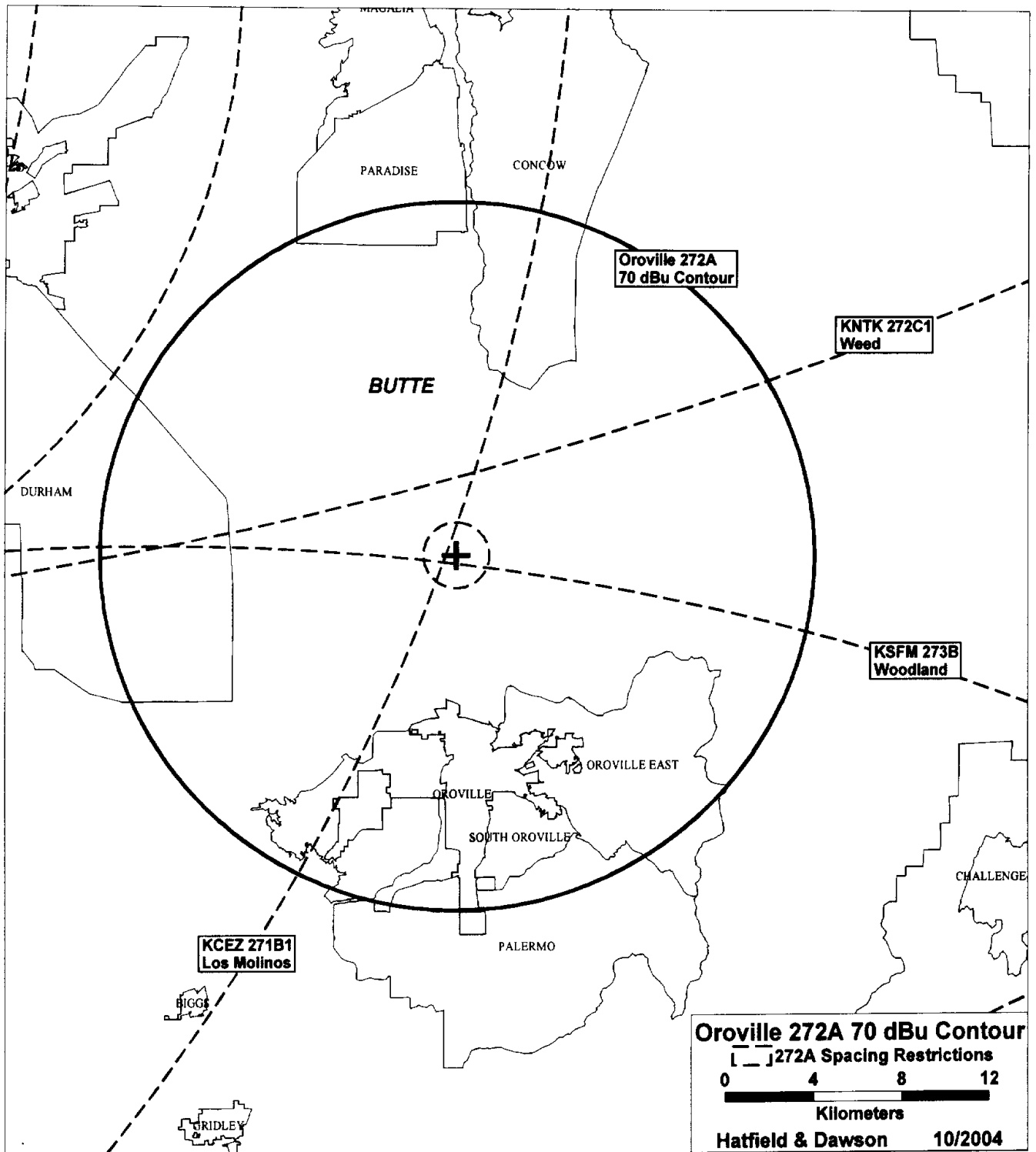
As was noted in the NPRM, this allotment requires a site restriction 9.4 kilometers north of Oroville in order to avoid short-spacing to the licensed transmitter sites of stations KCEZ Channel 271B1 Los Molinos and KSFM Channel 273B Woodland.

The City of Oroville, however, is extensive in area, and the boundaries of the city were not clearly delineated on the map exhibit included in Davidson's petition. The attached map exhibit demonstrates that the standard Class A 70 dBu contour (16.2 km radius) from the proposed Oroville allotment coordinates does not encompass 100% of the City of Oroville (shown shaded). The far (south) side of Oroville is located 17.3 kilometers from the proposed allotment coordinates. Neither will an adjustment in the allotment site coordinates correct this deficiency without simultaneously creating a short-spacing to KSFM Channel 273B Woodland.

Section 73.315(a) of the Commission's Rules states that "The transmitter site shall be chosen so that. . . a minimum field strength of 70 dB above one $\mu\text{V}/\text{m}$ (dBu), or 3.16 mV/m , will be provided over the entire principal community to be served." The Commission has consistently required that allotment proposals encompass 100% of the principal community within the standard 70 dBu contour distance for the class of the allotment. See, for example: Milford, Utah, MB Docket No. 02-331, R&O released June 10, 2004; Crawfordville, Georgia, 17 FCC Rcd 25070 (2002); Indian Wells and Indio, California, 15 FCC Rcd 23845 (2000).

As the proposal to allot Channel 272A at Oroville does not comply with Section 73.315(a) of the Commission's Rules, it is deficient and therefore must be denied.

Hatfield & Dawson Consulting Engineers



Channel 272A at Quincy

As outlined in the attached channel study, Channel 272A can be assigned for use at Quincy in compliance with the Commission's applicable Rules and Regulations regarding the separation among FM allotments. A site restriction is necessary in order to avoid short-spacing to station KNTK Channel 272C1 Weed, so for this study allotment site coordinates at N39-51-35 x W120-53-24 have been used. This site is 10 kilometers southeast of Quincy. The nominal distance to the 70 dBu F(50,50) contour for a Class A station is 16.2 kilometers. Therefore, and as demonstrated by the attached 70 dBu contour map, this site will provide greater than 70 dBu coverage for all of Quincy.

The allotment of Channel 272A at Quincy will provide the sixth local service at that community. Quincy is already served by AM station KPCO 1370 kHz and by FM stations KQNC Channel 201A (construction permit issued 7/15/2003), KJCQ Channel 203C2 (construction permit issued 7/15/2003), KNLF Channel 240A, and KHGQ Channel 262A. The Quincy Channel 272A allotment will provide aural service to 9,320 persons.

SEARCH PARAMETERS

Channel: 272A 102.3 MHz
 Latitude: 39 51 35
 Longitude: 120 53 24
 Safety Zone: 32 km
 Job Title: QUINCY 272A

FM Database Date: 041011
 Page 1

Call Status	City St	FCC File No.	Channel Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-True	Dist (km)	Req (km)
ADD	PORTOLA CA	RM-rfs010*	269A 101.7	0.000 0.0	39-49-59 120-28-54	94.7	35.07 4.07	31 CLOSE
KRNV-FM LIC	RENO NV	BMLH-030624AAS	271C3 102.1	11.000 150.0	39-35-03 119-47-52	107.8	98.52 9.52	89 CLOSE
RSV	RENO NV	-	271C3 102.1	0.000 0.0	39-35-03 119-47-52	107.8	98.52 9.52	89 CLOSE
KRNV-FM CP	RENO NV	BPH-021224ACO	271C3 102.1	11.000 150.0	39-35-03 119-47-54	107.8 SS	98.47 9.47	89 CLOSE
NEW-T APP	BERRY CREEK CA	BNPFT-030314CKU	272D 102.3	0.010 709.0	39-39-07 121-27-43	244.9	54.17 0.00	0 TRANS
K272CQ LIC	BURNEY, ETC. CA	BLFT-880317TB	272D 102.3	0.058 671.0	40-52-32 121-46-12	326.9	135.31 0.00	0 TRANS
K272DX CP	GRASS VALLEY CA	BNPFT-030709ABQ	272D 102.3	0.005 0.0	39-14-45 120-57-56	185.4	68.47 0.00	0 TRANS
ADD	OROVILLE CA	RM-10815	272A 102.3	0.000 0.0	39-35-51 121-34-11	243.6	65.14 -49.86	115 SHORT
KNTK LIC	WEED CA	BLH-991124AAQ	272C1 102.3	15.500 592.0	41-21-30 122-12-21	326.7	200.24 0.24	200 CLOSE
K272DR LIC	CARSON CITY NV	BLFT-960111TL	272D 102.3	0.010 845.0	39-15-31 119-42-16	123.0	121.80 0.00	0 TRANS
K272DA LIC	STATELINE, ETC. NV	BLFT-880107TB	272D 102.3	0.086 333.0	39-04-56 120-10-31	144.4	105.99 0.00	0 TRANS
NEW-T APP	EAST QUINCY CA	BNPFT-030317CWW	273D 102.5	0.010 1033.0	39-53-00 120-56-40	299.5	5.35 0.00	0 TRANS
NEW-T APP	PARADISE CA	BNPFT-030317HKJ	273D 102.5	0.010 397.0	39-47-01 121-40-44	263.1	68.07 0.00	0 TRANS
K273BI CP	TRUCKEE CA	BNPFT-030825AAD	273D 102.5	0.010 828.0	39-14-29 120-08-20	136.6	94.24 0.00	0 TRANS

=====

SEARCH PARAMETERS

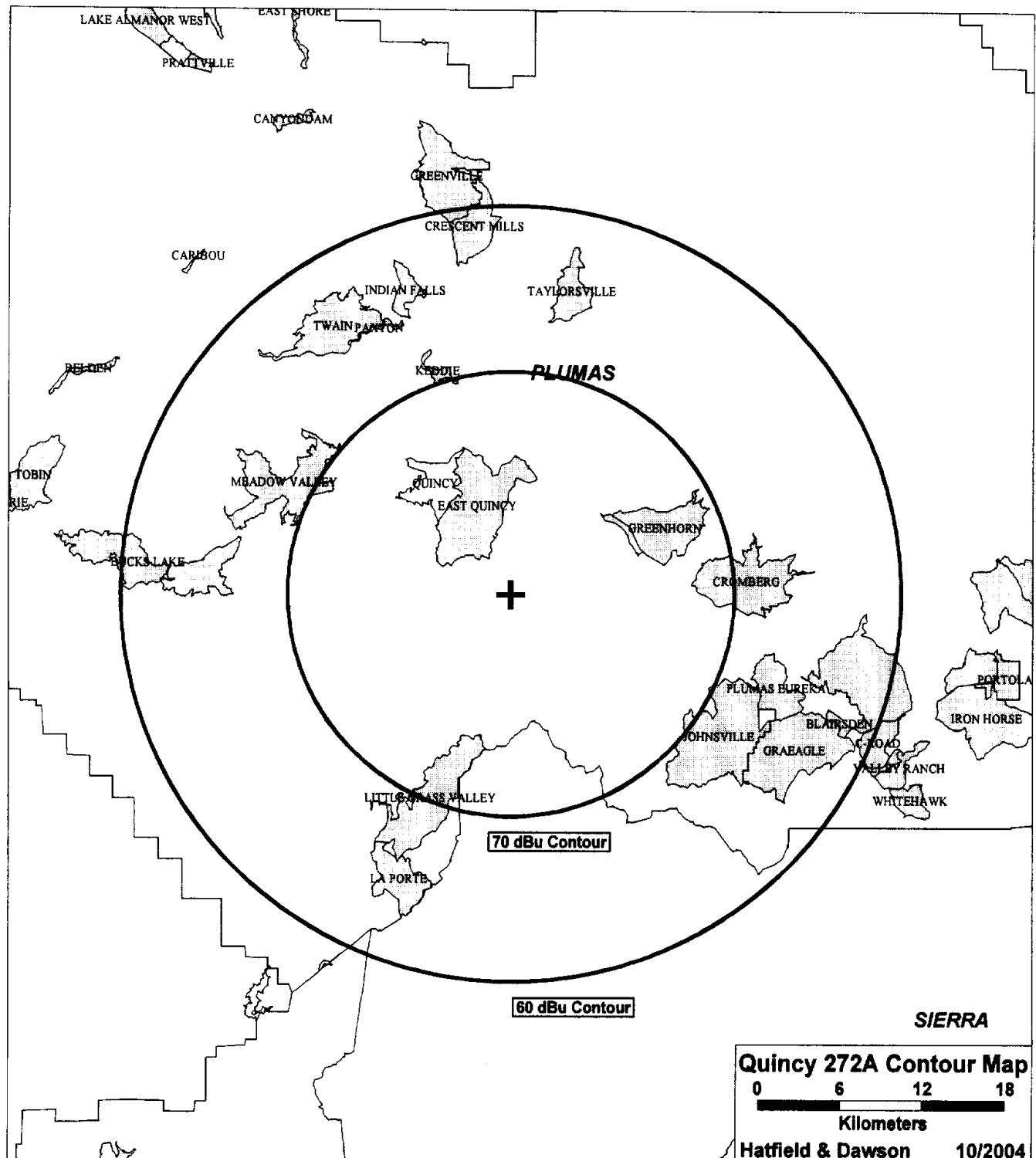
FM Database Date: 041011

Page 2

Channel: 272A 102.3 MHz
 Latitude: 39 51 35
 Longitude: 120 53 24
 Safety Zone: 32 km
 Job Title: QUINCY 272A

Call Status	City St	FCC File No.	Channel Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-True	Dist (km)	Req (km)
	SILVER SPRINGS		273C	0.000	39-30-00	101.2	193.76	165
ADD	NV	RM-DD-125	102.5	0.0	118-40-48		28.76	CLEAR
KWYL	SOUTH LAKE TAHOE		275C	39.000	39-18-38	125.0	105.80	95
LIC	CA	BLH-991208AAR	102.9	892.0	119-53-01		10.80	CLEAR
KWYLaux	SOUTH LAKE TAHOE		275C	7.900	39-15-34	122.9	121.75	0
CP	CA	BXPH-020517AAT	102.9	651.0	119-42-16		0.00	AUX

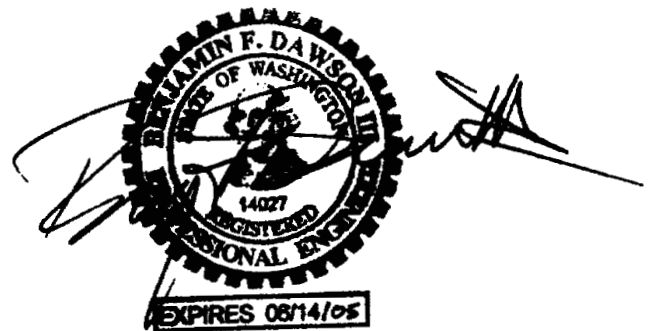
===== END OF FM SPACING STUDY FOR CHANNEL 272 =====



Statement of Engineer

This Engineering Statement supporting comments filed in MB Docket No. 04-350, has been prepared by Erik C. Swanson under my direct supervision. All representations herein are true to the best of my knowledge. I am an experienced radio engineer whose qualifications are a matter of record with the Federal Communications Commission. I am a partner in the firm of Hatfield & Dawson Consulting Engineers and am Registered as a Professional Engineer in the States of Washington and California.

Signed this 18th day of October, 2004.



Benjamin F. Dawson III, P.E.

Erik C. Swanson

Hatfield & Dawson Consulting Engineers

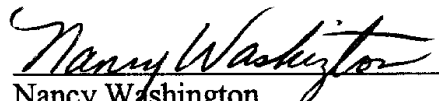
CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October, 2004, a copy of the foregoing "Comments and Counterproposal" was hand-delivered or sent by first-class mail, postage prepaid, to the following:

John A. Karousos, Assistant Chief*
Audio Division
Media Bureau
Federal Communications Commission
The Portals II
445 Twelfth Street, S.W.
Room 3-A266
Washington, DC 20554

Rolanda F. Smith*
Audio Division
Media Bureau
Federal Communications Commission
The Portals II
445 Twelfth Street, S.W.
Room 2-B450
Washington, DC 20554

Linda A. Davidson
2134 Oak Street, Unit C
Santa Monica, California 90405


Nancy Washington

* Hand Delivered